

Service Appeal No. 889/2018


25th July, 2022

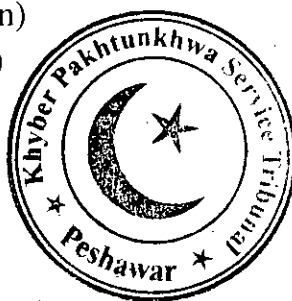
Learned counsel for the appellant present. Mr. Kabirullah Khattak, Additional Advocate General for respondents present.

2. Learned counsel for the appellant submitted an application for withdrawal of the instant service appeal with the permission to file afresh on the grounds that some new cause of action had arisen because of which the appellant wanted to withdraw the instant appeal. This appeal is dismissed as withdrawn in view the application. The appellant may file fresh appeal if he is so advised or desirous, which, if filed, will be decided on its own merits and limitation/ restriction etc. Consign.

3. *Pronounced in open court in Peshawar and given under our hands and seal of the Tribunal on this 25th day of July, 2022.*


(Salah Ud Din)
Member(J)


(Kalim Arshad Khan)
Chairman



Before the KP Service Tribunal, Pesh:

S.A.# 889/2018.

M Bashir vs Police.

Application for withdrawal of the
above titled Appeal with the permission
to file a fresh appeal against the
order dated 18.05.2015

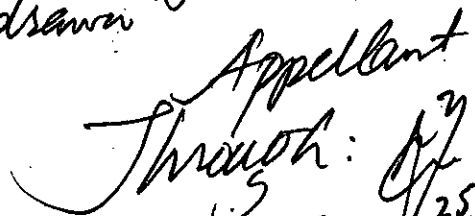
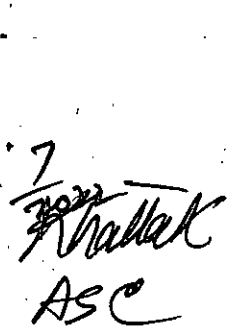
R/Sheweth;

1) That, the appellant's appeal is pending
adjudication before this H/Tribunal which
was fixed for hearing in argument s.
today on 25.07.2022.

2) That, during the course of arguments
it came into the knowledge of the
appellant/counsel for appellant that an
order dated 18.05.2015 has issued
where by penalty has been imposed upon
appellant.

It is, therefore most humbly prayed
that the instant appeal may kindly be
dismissed as withdrawn.

25th July 2022

Appellant.
Through: 
Noor Mohammad 
25/7/2022
ASCO

10.08.2021

Since, 1st Moharram has been declared as public holiday, therefore, case is adjourned to 29/12/2021 for the same as before.


Reader

29/12/2021

Due to winter vacations the case is adjourned to 18/3/2022 for the same as before.


Reader

18.03.2022

Due to retirement of the Worthy Chairman, the Tribunal is defunct, therefore, case is adjourned to 10.06.2022 for the same as before.


Reader.

10.6.2022.

Bench is incomplete. Therefore, the case is adjourned to 25/07/2022 before the same.


READER.

19.08.2020

Due to summer vacations, the case is adjourned to 21.10.2020 for the same.

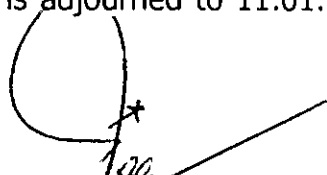


Reader

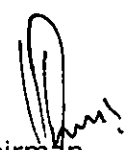
21.10.2020

Junior to counsel for the appellant and Addl. AG alongwith Zewar Khan, Inspector for the respondents present.

The Bar is observing general strike today, therefore, the matter is adjourned to 11.01.2021 for hearing before the D.B.



(Mian Muhammad)
Member



Chairman

11.01.2021

Due to COVID-19, the case is adjourned for the same on 16.04.2021 before D.B.



READER

16.04.2021

Due to demise of the Worthy Chairman, the Tribunal is non-functional, therefore, case is adjourned to 10.08.2021 for the same as before.



Reader

28.01.2020

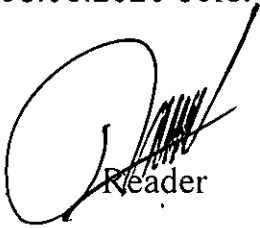
None for the appellant present. Mr. Muhammad Jan, DDA alongwith Mr. Zewer Khan, Inspector for respondents present. Due to General Strike of the bar on the call of Khyber Pakhtunkhwa Bar Council, the instant case is adjourned. To come up for further proceedings/arguments on 24.03.2020 before D.B. Appellant be put on notice for the date fixed.


Member


Member

24.03.2020

Due to public holidays on account of Covid-19, the case is adjourned. To come up for the same on 08.06.2020 before D.B.


Reader


08.06.2020

Bench is incomplete as learned Member (J) is on leave, therefore, the case is adjourned. To come up for the same on 19.08.2020 before D.B.


Reader


02.07.2019


Appellant absent. Mr. Kabirullah Khattak learned Additional Advocate General alongwith Zewar Khan SI representative of the respondents present and submitted written reply/comments. Adjourned. To come up for rejoinder/arguments on 11.09.2019 before D.B.


Member

11.09.2019


Learned counsel for the appellant present. Mr. Zia Ullah learned Deputy District Attorney alongwith Zewar Khan SI present. Learned counsel for the appellant seeks adjournment. Adjourn. To come up for arguments on 25.11.2019 before D.B.


Member


Member

25.11.2019

Due to general strike of the KP Bar Council, the case is adjourned. To come up on 28.01.2020 before D.B.


Member


Member

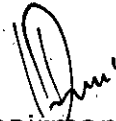
01.03.2019 Clerk to counsel for the appellant present. Written reply not submitted. No one present on behalf of respondent department. Notice be issued to the respondent department with direction to furnish written reply/comments. Adjourn. To come up for written reply/comments on 11.04.2019 before S.B.



Member

11.04.2019 Appellant in person and Addl. AG for the respondents present.

Learned AAG requests for time to procure the reply/comments from the respondents. Adjourned to 17.05.2019 before S.B.



Chairman

17.05.2019 Junior to counsel for the appellant present. Written reply not submitted. Akhtar Said ASI representative of respondent department present and seeks time to furnish written reply/comments. Granted by way of last chance. Adjourn. To come up for written reply/comments on 02.07.2019 before S.B.



Member

19.10.2018


Junior to counsel for the appellant present and seeks adjournment as senior counsel for the appellant is not in attendance. Adjourn. To come up for preliminary hearing on 05.12.2018 before S.B



Member

05.12.2018

Junior to counsel for the appellant requests for adjournment due to pre-occupation of learned senior counsel in the honourable High Court. Adjourned to 18.01.2019 for preliminary hearing before S.B.



Chairman

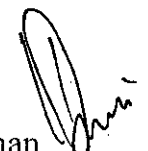
18.01.2019

Counsel for the appellant present.

Contends, inter-alia, that admittedly 262 days leave was at the credit of appellant at the time of passing of impugned order dated 10.01.2018. The same was unjustifiably converted into leave with full pay and leave on half pay which was in violation of Civil Servants Revised Leave Rules, 1981. It was further contended that stoppage of one annual increment with cumulative effect was never the penalty awarded through order dated 01.10.2015, though set aside by this Tribunal while deciding appeal No. 30/2016 on 08.11.2017.

Points raised warrant admission of instant appeal for regular hearing. Admit. The appellant is directed to deposit security and process fee within 10 days. Thereafter, notices be issued to the respondents. To come up for written reply/comments on 01.03.2019 before S.B.

The respondents shall also produce leave record of appellant as well as record pertaining to O.B No. 435 dated 18.05.2015 on the next date of hearing.



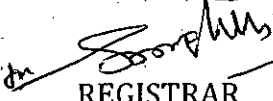



Chairman

Appellant Deposited
Security & Process Fee

Form- A
FORM OF ORDER SHEET

Court of _____

Case No. 889/2018

S.No.	Date of order proceedings	Order or other proceedings with signature of judge
1	2	3
1-	13/07/2018 18-7-2018	<p>The appeal of Mr. Muhammad Bashir presented today by Mr. Noor Muhammad Advocate may be entered in the Institution Register and put up to the Worthy Chairman for proper order please.</p> <p style="text-align: right;"> REGISTRAR</p>
2-	10.08.2018	<p>This case is entrusted to S. Bench for preliminary hearing to be put up there on <u>10-8-2018</u></p> <p style="text-align: right;"> CHAIRMAN</p>
	10.10.2018	<p>Neither appellant nor his counsel present. Case to come up for preliminary hearing on 10 10.10.2018 before S.B.</p> <p style="text-align: right;"> Chairman</p>
	10.10.2018	<p>Mr. Mir Zaman, Clerk of counsel for the appellant present and made a request for adjournment. Granted. To come up for preliminary hearing on 19.10.2018 before S.B.</p> <p style="text-align: right;"> Chairman</p>

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 889 /2018

MUHAMMAD BASHIR

VS

POLICE DEPTT:

INDEX

S.NO.	DOCUMENTS	ANNEXURE	PAGE
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3.	Impugned order	B	8.
4.	Departmental appeal	C	9.
5.	Rejection order	D	10.
6.	Judgment	E	11- 13.
7.	Impugned order	F	14.
8.	Departmental appeal	G	15.
9.	<i>vakalat Nama</i>	- - - - -	16.

APPELLANT

THROUGH:

NOOR MOHAMMAD KHATTAK,
ADVOCATE

Flat No. 3, Upper Floor,
Islamia Club Building,
Khyber Bazar, Peshawar
0345-9383141

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR

APPEAL NO. 889 /2018

Khyber Pakhtunkhwa
Service Tribunal

Diary No. 1158

Mr. Muhammad Bashir, Ex-Constable No.1093,
Police Line, Dir Lower at Timergara.

Dated 13-7-2018

..... **APPELLANT**

VERSUS

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar.
2. The Deputy Inspector General of Police, Malakand Region at Saidu Sharif Swat.
3. The District Police Officer, District Dir Lower.

..... **RESPONDENTS**

APPEAL UNDER SECTION- 4 OF THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL ACT, 1974 AGAINST THE IMPUGNED ORDER DATED 10-01-2018 WHEREBY ONE ANNUAL INCREMENT FOR THE YEAR 1.12.2015 HAS BEEN STOPPED WITH CUMULATIVE EFFECT AND THE INTERVENING PERIOD HAS ALSO BEEN TREATED AS LEAVE WITHOUT AND AGAINST NOT TAKING ACTION ON THE DEPARTMENTAL APPEAL OF THE APPELLANT WITHIN THE STATUTORY PERIOD OF NINETY DAYS

PRAYERS

That on acceptance of this appeal the impugned order dated 10.01.2018 may very kindly be set aside to the extent that the annual increment for the year 2015 may be restored with all back benefits and the remaining intervening period may also be treated as earned leave. Any other remedy which this Tribunal deems fit that may also be awarded in favor of the appellant.

R/SHEWETH:

ON FACTS:

- 1- That the appellant was appointed as Constable in the respondent Department and has served the respondent Department for quite considerable time efficiently and up to the entire satisfaction of his superiors.
- 2- That the appellant while posted at police Station Haya Seri District Dir Lower has become ill and due to that reason the appellant visited the District Headquarters Hospital Timargara for treatment. That after proper check up the

Filed to
Registrar
13/7/18

concern Doctor advised complete bed rest to the appellant and as such on the said advised the appellant requested the concerned authority for leave but no reply was received from the concern quarter. Copy of Medical prescription is attached as annexure **A.**

- 3- That due to the above mentioned reason the appellant was unable to attend his duty. That after recovery from illness the appellant visited the concerned quarter, where he was handed over the impugned order dated 01-10-2016 whereby Major Penalty of Dismissal from service was imposed on the appellant under the misconception of law. Copy of the impugned order is attached as annexure **B.**
- 4- That appellant feeling aggrieved from the impugned order dated 01-10-2015 filed Departmental appeal but the same was rejected on no good grounds vide order dated 17-12-2015 then after the appellant filed service appeal No.30/2016 before this august Tribunal which was accepted vide judgment dated 08.11.2017. Copies of the Departmental appeal, rejection order and judgment are attached as annexure **C, D & E.**
- 5- That the respondent Department implemented the judgment of this august Tribunal and re-instated the appellant into service but some portion of the intervening period has been treated as leave without pay along with minor punishment of stoppage of one annual increment with cumulative effect vide order dated 10.01.2018. Copy of the order is attached as annexure **F.**
- 6- That appellant feeling aggrieved from the impugned order dated 10.01.2018 filed Departmental appeal before the respondent No.1 but no reply has been received so far. Hence the present appeal on the following grounds amongst the others. Copy of the Departmental appeal is attached as annexure..... **G.**

GROUND:

- A- That the impugned orders dated 10.01.2018 is against the law, facts, norms of natural justice and materials on the record hence not tenable and liable to be modified.
- B- That the appellant has not been treated by the respondents in accordance with law and rules on the subject noted above and as such the respondents violated Article 4 and 25 of the Constitution of Islamic Republic of Pakistan 1973.

- C- That the respondents discriminated the appellant on the subject noted above i.e. by converting the punishment of major punishment to that of stoppage of one annual increment for the year 2015 with cumulative effect as well as some portion of the intervening period has been treated as leave without pay.
- D- That the respondents acted in arbitrary and malafide manner while converting the punishment of major punishment to that of stoppage of one annual increment for the year 2015 with cumulative effect as well as some portion of the intervening period has been treated as leave without pay.
- E- That the action and inaction of the respondents are not in accordance with law and rules, therefore the impugned order dated 10.1.2018 is liable to be modify/rectify to the extent of one annual increment and EOL.
- F- That seeks permission to advance other grounds and proofs at the time of hearing.

It is therefore, most humbly prayed that the appeal of the appellant may be accepted as prayed for.

Dated: 6.1.2018

APPELLANT


MUHAMMAD BASHIR

THOROUGH:


**NOOR MOHAMMAD KHATTAK
ADVOCATE**

A-4

Medical No. 2

Rs. 5/-

No. OUT-PATIENTS DEPARTMENT

NAME

YEARLY NO.

DATE

No. OUT-PATIENTS DEPARTMENT

Rs. 3/-

NAME *Rashid Ahmad*

YEARLY NO. *216763*

DATE *20/11/11*

DISEASE

FACE VALUE RUPEES 5/-
FACE VALUE RUPEES 3/-

ACE
Plasma *by Maslam =*
Ind

if Nevada *OR*
OR

if flayy *stul.*
in stul.

tab Nevada *saomy*

tab *Antamizel* *OR*

stab *N. Tox* *saomy*

OR

Medical Officer
D.H. Hospital
D.H. Lower

ATTESTED

ATTESTED

تعمیراتی کام

مبلغ ویر لاکھ

نمبر 06 - 30/07/15

مر 06 روایتی ایڈ فورڈ 30/07/15 وقت 10:08 کی درجہ اس وقت
کونسل بنان دیکھ میر پور میں درج تھا اور سب سے صدر عمارت
لغویں علانہ حوالہ بنیال مقررہ ہرہ برصیر عمارت روانہ کرتے
پرامت عمارت کٹی

فیرا علی
نقل و حرکت

M.M.P.S.H.SEBI
02.09.15

ATTESTED

Handwritten signature

ATTESTED

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(26)

قدیمی خانہ - ڈاکٹر علی حسن ہسپتال ٹیمپرا

کنٹریبل جیل ٹیمپرا 1093 کو پورٹ ٹریڈی اور پورٹ ڈرگ کی سہولت

کو پورٹ ٹریڈی اور پورٹ ڈرگ کی سہولت

مکتوبہ فریڈ
Hafes
30/1/52



D.O.

Ad. home bed
Rest for 7 days

Medical Officer
D.H.Q Hospital-Timergara
Dr Lower

ATTESTED

ATTESTED

[Signature]

[Signature]

Dr. Noor Islam

M.B.B.S (Pesh), D.L.O (Pak)
M.C.P.S. F.C.P.S

ENT Specialist

Clinic: Near DHQ Hospital Timergara
Mob: 0346-9392522
0344-9778388



ڈاکٹر نور اسلام

ایم بی بی ایس (پشاور)، ڈی این او (پاک)
ایم سی پی ایس، ایف سی پی ایس
ماہر امراض: ناک، کان، گلہ
کلینک: بالقابل ڈی ایچ کیو ہسپتال تیمرگرا

Name: Bashir Ahmad Age: Adult Sex: M Date: 7/8/2015

Clinical Record

Pac

1/2 pain left ear

= fullness

= vomiting

= Head aches

2

of Norbac eye 2

WS = 5

of Wren

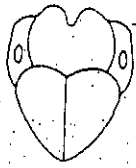
= of Decadrin 1/2

WS = 5

1/2 Nose mucous dis

Lignocip ear drops

WS = 3+3 P3



throat congested

Tab Noradate 500 mg

WS = 1+1



Ear Rt Turbinal

Tab Coflan 50 mg

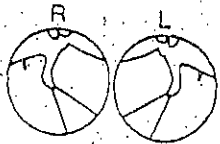
Left Turbinal

WS = 1+1

and congested

Tab Stermedol

WS = 1+1



External

Eyr Furber 200



Vertigo

Admin Complete bed rest

1/2

and medical leave for 02

Labyrinthitis

weeks

ATTESTED

[Signature]

[Signature]

7/8/2015

ATTESTED

OFFICE OF THE DISTRICT POLICE OFFICER, DIR LOWER AT TIMERGARA

ORDER

B-8

This order will dispose of the departmental enquiry conducted against Constable Muhamamad Bashir No 1093, that he while posted to Police Station Haya Seri, absconded himself from his lawful duty with effect from 19/07/2015 to 21/07/2015 (02 days), and 30/07/2015 to 17/08/2015 (18 days) Total 20 days absent, which is gross misconduct on his part. Therefore he was served charge sheet coupled with statement of allegation and Muhammad Naeem Khan SDPO Jandool was appointed as enquiry officer to conduct proper departmental enquiry and submit his finding.

The enquiry officer during the course of enquiry recorded the statement of all concerned, as well as the delinquent Officer/Officials. The Enquiry Officer in his finding report recommended him for appropriate Punishment.

Therefore, I Qasim Ali (PSF), District Police Officer, Dir Lower in exercise of power vested to me under (E & D) Rules 1975 with amendment 2014, dismissed him from Service with immediate effect and period of absence is treated as leave without.

ORDER ANNOUNCED

District Police Officer,
Dir Lower at Timergara

ATTESTED

CB No: 316 REC:

Date: 1/11 2015

ATTESTED

Sy
Entry made
in Roll

Glas
ABC
2/A

[Handwritten signatures and initials on the right side of the page]

خدمت چٹائی ڈیپارٹمنٹ
عنوان: درخواست بہار دوم بارہ علی

جناب عالی

مؤرخہ شمارے کے ساتھ مورخہ 28/08/2009 کا پتہ

میں بطور ڈیپوٹی سب انسپکشن ایجنٹ کے سرعام دیئے گئے ہیں۔
یہ کہ سابقہ دوران ملازمت میں آپ نے ان کو کئی قسم کی
عساکرت کا سہارا دیا ہے۔

یہ کہ سابقہ وقت میں کئی بار سے پورے پیمانے پر
سابقہ کو اس کے فرائض میں سے حصہ کرنے کا حکم
دیا گیا ہے۔ (آرڈر نمبر 876/EC مورخہ 10-10-2001)
یہ کہ سابقہ ایک غریب گھرانے سے تعلق رکھتا ہے، شہریت یافتہ نہیں ہے
اور محکمہ پولیس میں اس کے لئے کوئی حد نہیں ہے

26-27 دوم بارہ علی کا حوالہ ہے

یہ سبھی کے ساتھ ساتھ دوبارہ علی کے ایک سے
کئی سابق اور سابق کے راجدیت سے تعلق ہے

عمر 10/10/2009

اس کے ساتھ

1093 نمبر 21/10/2009

0301 - 0084273

SE/DPD/DIT

ATTESTED

ATTESTED

[Signature]

[Signature]

OFFICE OF THE REGIONAL POLICE OFFICER, MALAKAND REGION
AT SAIDU SHARIF SWAT

D-10

ORDER:

This order will dispose off appeal of Ex-Constable Muhammad Bashir No. 1093 of Dir Lower District for reinstatement in-service.

Brief facts of the case are that Ex-Constable Muhammad Bashir No. 1093 while posted to Police Station Haya Seri, absented himself from his lawful duty with effect from 19/07/2015 to 21/07/2015 (02 days), 30/07/2015 to 17/08/2015 (18 days) total 20 days absent, which was gross misconduct on his part therefore he was issued charge sheet with coupled of statement of allegations and Muhammad Naem Khan SDPO/Jandool was appointed as Enquiry Officer. The Enquiry Officer conducted proper departmental enquiry against the defaulter Constable and recorded the statements of all concerned, including the defaulter Constable and found him guilty. The Enquiry Officer in his finding, recommended him for appropriate punishment. Therefore, the District Police Officer, Dir Lower dismissed him from service with immediate vide his office OB No. 876/EC, dated 01/10/2015.

He was called in Orderly Room on 15/12/2015 and heard him in person. The appellant did not produce any substantial material in his defense. Therefore, I uphold the order of District Police Officer, Dir Lower, whereby the appellant has been awarded punishment of dismissal from service. His appeal is rejected.

Order announced

(AZAD KHAN) Tst, PSP
Regional Police Officer,
Malakand, at Saidu Sharif Swat

No. 9811 /E,

Dated 17-12-2015.

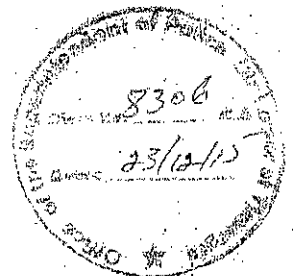
Copy to District Police Officer, Dir Lower for information and necessary action, with reference to his office Memo: No. 24268/EB, dated 16/10/2015. His service record is returned herewith for record in your office.

Encls. S-Roll

For missal ✓

23-12-15

EC



ATTESTED

(Signature)
22/12/2015

ATTESTED

(Signature)

E-11

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL,
CAMP COURT SWAT

Service Appeal No. 30/2016

Date of Institution... 07.01.2016

Date of Tdecision... 08.11.2017



Muhammad Bashir, Ex-Constable No. 1093, Police Line, Dir Lower at Timergara.
... (Appellant)

Versus

1. The Inspector General of Police, Khyber Pakhtunkhwa, Peshawar and 3 others.
... (Respondents)

MR. NOOR MUHAMMAD KHATTAK,
Advocate

... For appellant.

MR. KABEERULLAH KHATTAK,
District Attorney

... For respondents.

R. NIAZ MUHAMMAD KHAN,
R. MUHAMMAD HAMID MUGHAL,

... CHAIRMAN
... MEMBER

JUDGMENT

NIAZ MUHAMMAD KHAN, CHAIRMAN: - Arguments of the learned
counsel for the parties heard and record perused.

ATTESTED

FACTS

2. The appellant was dismissed from service on his absence from duty on
01.10.2015, against which he filed departmental appeal on 06.10.2015 which was
rejected on 17.12.2015 and thereafter, he filed the present service appeal on
07.01.2016.

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

ARGUMENTS

3. The learned counsel for the appellant argued that in the impugned order, the
law under which the dismissal was made is mentioned (E&D) Rules, 1975. That in
view of judgment reported as 2007-SCMR-299 such departmental proceedings are
illegal. He further argued that in the very dismissal order, the period of absence was

12

treated as leave without pay which means that the absence period has been legalized and in view of the judgment reported as 2006-SCMR-434 no dismissal order could be passed. He next argued that no charge sheet and statement of allegations were issued to the appellant nor regular enquiry was conducted and thus the department violated Rule 6 of the Khyber Pakhtunkhwa Police Rules, 1975. In this regard he replied upon a judgment reported as 2008-SCMR-1369.

4. On the other hand, the learned Addl. Advocate General argued that the appellant committed gross misconduct by absenting himself without leave or permission. He further argued that charge sheet and statement of allegations were issued to the appellant and proper enquiry was conducted.

CONCLUSION

5. Regarding the proceedings under wrong law, this Tribunal is not in agreement with the learned counsel for the appellant because the quoted judgments on the subject laid down the principle in a case where the whole proceedings including show cause notice, charge sheet and statement of allegations etc. were undertaken under the repealed rules. In the present case the situation is not the same. Only in the final order name of rules has wrongly been written. In the impugned order the words "(E&D) Rules, 1975 with amendment in 2014" clearly suggests the intention of the authority was that the proceedings were taken under the Khyber Pakhtunkhwa Police Rules, 1975 as amended in 2014. In this regard this Tribunal has already delivered judgment entitled "*Muhammad Qayum Versus Executive District Officer and others*" bearing appeal No. 670/2014 decided on 12.09.2017 by discussing the relevant judgments of the Superior Courts and held that even if a wrong law is mentioned in the proceedings but the spirit of the law is adhered to then the same would amount to clerical mistake and would not affect the legality of procedure. But the present case is lies at lower pedestal because only due to clerical mistake the words are used as "E&D Rules, 1975". The second objection

ATTESTED

EXAMINER
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

13

of the learned counsel is fatal to the proceedings. In the final order of dismissal the Authority has legalized the absence by treating the same as leave without pay and in view of judgment referred to by the learned counsel for the appellant wherein it has been laid down that no departmental action could be taken for the period treated as leave. There is no need to discuss the objection regarding non holding of enquiry because when the authority has treated the absence as leave then holding of enquiry or otherwise have no bearing on the fate of the case.

6. In view of the above discussion this appeal is accepted and the appellant is reinstated in service. The intervening period may be treated leave of the kind due.

Parties are left to bear their own costs. File be consigned to the record room.

~~Announced~~
08-11-2017
SD/- Niaz Muhammad Khan
Chairman
Appellate Court Swat

Certified to be true copy
Khyber Pakhtunkhwa
Service Tribunal,
Peshawar

SD/- M. Hamid Mughal
Member

Date of Presentation of Appeal 16-11-17
Number of Words 1200
Copying Fee 8
Urgent _____
Total 8
Name of Copier [Signature]
Date of Copying 21-11-17
Date of Delivery of Copy 21-11-17



OFFICE OF THE
DISTRICT POLICE OFFICER
DIR LOWER

Ph#.0945-9250005 Fax#. 0945-9250049
E-mail: dpolowerdir@gmail.com

14

ORDER

In the light of judgment of August Service Tribunal, Khyber Pakhtunkhwa letter No.2442/ST, dated 14-11-2017 and Judgment dated 08/11/2017 passed by Service Tribunal Khyber Pakhtunkhwa, and opinion of AIG Legal CPO Peshawar received vides Endst: No.51/Legal, dated 03/01/2018 as well as on the opinion of Inspector Legal Dir Lower, Ex Constable Bashir Ahmad is hereby re-instated in service and his intervening period is treated leave of kind dues as under and the remaining portion is counted as leave without pay as there is no further leave on his credit. He is allotted Constabulary No. 2082.


Total leave at his credit =262 days
Leave on full pay =120 days
Leave on half pay =142 days

On re-instatement his pay is fixed @, **Rs.12760/-PM**, w, e, from 10-01-2018 i.e the date of his joining duty. Therefore, his pay is hereby re-fixed as under: -

1	Pay revised on 01-07-2015 in BPS-05(6985-340-17185)	@RS:8685/-
2	Stopped his one annual increment of 01-12-2015 with cumulative effect vide OB No.435, dated 18-05-2015	@ Rs: 8685/-
3	Pay revised on 01-07-2016 in BPS-05(8590-420-21190)	@Rs:10690/-
4	Pay revised on 01-07-2017 in BPS-05(10260-500-25260)	@Rs:12760/-

OB No. 47


Dated 10 /01/2018


District Police Officer,
Dir Lower.

No. 1163-05 /E, Dated Timergara the, 10 /01 /2018

Copies for information and necessary action to the:-

1. District Accounts Officer, Dir Lower.
2. Pay Officer.
3. OASI

ATTESTED


The Inspector General of Police,
Police line, Peshawar.

①
G-15

Subject: **DEPARTMENTAL APPEAL AGAINST THE IMPUGNED
ORDER DATED 10/01/2018**

Respected Sir,

Most respectfully, it is stated, that I am the employee of your good self department and is serving as constable before your kind control. The I while serving as constable remain absent from duties due to illness and during that period I was dismissed from the service on 01/10/2015, wherefrom, I feeling aggrieved from the impugned dismissal order dated 01/10/2015, preferred departmental appeal and then after filed service appeal no.30/2016 before the august service tribunal Peshawar. The august service tribunal accepted the above mentioned service appeal and re-instated me in to the service. The competent authority implemented the judgment of august service tribunal and re-instated me in to service but the intervening period of my absence has been treated as leave without pay as well as stopped one annual increment with cumulative effect vide order dated 10/01/2018. I feeling aggrieved from the impugned order dated 10/01/2018 preferred this departmental appeal before your good self for redressal of my grievances.

It is, therefore, most humbly prayed that on accepting of this departmental appeal the impugned order dated 10/01/2018 my very kindly be modified by treating the intervening period as leave on full pay and also restored the annual increment with all back benefits.

Dated:15.3.2018

Your Obediently

Bashir

BASHIR AHMAD

CONSTABLE,

POLICE LINE, DIR LOWER

ATTESTED

[Signature]

VAKALATNAMA

Before the Khyber Pakhtunkhwa Service Tribunal
Peshawar

OF 2018

Muhammad Bashir

(APPELLANT)
(PLAINTIFF)
(PETITIONER)

VERSUS

Police Department

(RESPONDENT)
(DEFENDANT)

I/We *Muhammad Bashir*

Do hereby appoint and constitute **NOOR MOHAMMAD KHATTAK, Advocate, Peshawar** to appear, plead, act, compromise, withdraw or refer to arbitration for me/us as my/our Counsel/Advocate in the above noted matter, without any liability for his default and with the authority to engage/appoint any other Advocate Counsel on my/our cost. I/we authorize the said Advocate to deposit, withdraw and receive on my/our behalf all sums and amounts payable or deposited on my/our account in the above noted matter.

Dated. ____/____/2018

M. Bashir
CLIENT

N
ACCEPTED

NOOR MOHAMMAD KHATTAK

&

M. M. Madni
MUHAMMAD MAAZ MADNI
ADVOCATES

OFFICE:

Flat No.3, Upper Floor,
Islamia Club Building, Khyber Bazar,
Peshawar City.

Phone: 091-2211391

Mobile No. **0345-9383141**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. **889/2018**

Constable Muhammad Bashir Ex-Constable Police Line District Lower Dir at
Timergara..... Appellant.

VERSUS.

- 1) Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
- 2) Regional Police Officer Malakand at Saidu Sharif, Swat.
- 3) District Police Officer Dir Lower.....Respondents.

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(ZEWAR KHAN)
SI LEGAL
DIR LOWER

①

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. **889/2018**

Constable Muhammad Bashir Ex-Constable Police Line District Lower Dir at
Timergara..... Appellant.

VERSUS.

- 1) Provincial Police Officer, Khyber Pakhtunkhawa Peshawar.
- 2) Regional Police Officer Malakand at Saidu Sharif, Swat.
- 3) District Police Officer Dir Lower..... Respondents.

PARA WISE REPLY ON BEHALF OF RESPONDENTS.

Respectfully Sheweth:

PRELIMINARY OBJECTIONS.

- 1) That the present service appeal is not maintainable in its form.
- 2) That the appellant has not come to this August Tribunal with clean hands.
- 3) That the present appeal is badly time barred.
- 4) That this Honorable Service Tribunal has no jurisdiction to entertain the present service Appeal.
- 5) That the appellant has got no cause of action.
- 6) That the appellant has suppressed the material facts from this Honorable Tribunal.

ON FACTS:

1. Pertains to record, hence needs no comments.
2. Incorrect, the appellant neither inform his seniors about the illness nor seek permission in this regard.
3. Incorrect, no misconception of law has been committed by respondents. The appellant committed misconduct and remained absent on his own sweet will, violating the spirit of discipline. The dismissal order was passed after fulfilling of the codel formalities. (Copy of charge sheet, reply, inquiry report is attached as annexure A, B, C and D).
4. Incorrect, first paragraph to the extent of rejection on no good grounds is incorrect, the rest of para is correct.

- 5. Needs no comments.
- 6. Incorrect, the appellant has got no cause of action to file the present service appeal, as the impugned order was issued in accordance with law and rules.

GROUND

- (A) Incorrect, the order is based on law.
- (B) Incorrect, the appellant has been treated in accordance with law, rules and no violation of the Constitution of Pakistan has been committed by respondents.
- (C) Incorrect, no discrimination has been committed by respondents with appellant and the order has been implemented in letter and spirit. As the judgment of the honourable Service Tribunal ordained that the intervening period may be treated as leave of the kind due. The intervening period was counted as under:-

- 1. Total leave on credit.....262 days.
- 2. Leave on full pay.....120 days.
- 3. Leave on half pay.....142 days.

The increment has been stopped with cumulative effect.

The remaining portion of intervening period, he spent out of service is counted as leave without pay, as there was no further leave on his credit.


- (D) Incorrect, no malafide or arbitrary manner has been adopted by respondents with appellant and all the process has been done purely on merit.
- (E) Incorrect, all the actions of respondents are in accordance with law and rules and no illegality has been committed.
- (F) The respondents also seek leave of this honorable Tribunal to rely on additional grounds at the time of arguments/ hearing.

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PRAYER:

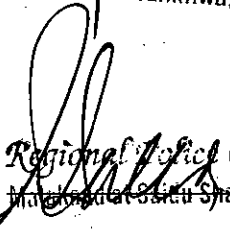
It is therefore humbly prayed that on acceptance of this Para-wise reply, the appeal may graciously be dismissed with cost.

**Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar.**



**Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.**

**Regional Police Officer,
Malakand at Saidu Sharif Swat.**



**Regional Police Officer,
Malakand at Saidu Sharif, Swat.**

**District Police Officer,
Dir Lower.**



**District Police Officer
Dir Lower.**

BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 889/2018

Constable Muhammad Bashir Ex-Constable Police Line District Lower Dir at Timergara..... Appellant.


VERSUS.

- 1) Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
- 2) Regional Police Officer Malakand at Saidu Sharif, Swat.
- 3) District Police Officer Dir Lower.....Respondents.

AFFIDAVIT.


We the following respondents do hereby solemnly affirm and declare on Oath that the contents of Para-wise reply are true and correct to the best of our knowledge and belief and that nothing has been concealed from this Honorable Service Tribunal.

Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar.



Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

Regional Police Officer,
Malakand at Saidu Sharif, Swat.



Regional Police Officer,
Malakand at Saidu Sharif, Swat.

District Police Officer,
Dir Lower.



District Police Officer,
Dir Lower

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BEFORE THE KHYBER PAKHTUNKHWA SERVICE TRIBUNAL
PESHAWAR.

Service Appeal No. 889/2018

Constable Muhammad Bashir Ex-Constable Police Line District Lower Dir at
Timergara..... Appellant.

VERSUS.


- 1) Provincial Police Officer, Khyber Pakhtunkhwa Peshawar.
- 2) Regional Police Officer Malakand at Saidu Sharif, Swat.
- 3) District Police Officer Dir Lower.....Respondents.

POWER OF ATTORNEY

We the following respondents do hereby authorize Mr. Zewar Khan SI Legal Dir Lower to appear on our behalf before the Honorable Service Tribunal in the above Service appeal and pursue the case on each and every date.

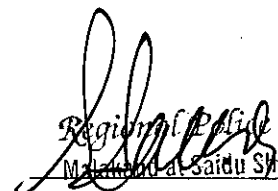
He is also authorized to submit all the relevant documents in connection with the above Service Appeal.

Provincial Police Officer,
Khyber Pakhtunkhwa Peshawar.




Provincial Police Officer,
Khyber Pakhtunkhwa, Peshawar.

Regional Police Officer,
Malakand at Saidu Sharif, Swat.



Regional Police Officer,
Malakand at Saidu Sharif, Swat.

District Police Officer,
Dir Lower.



District Police Officer
Dir Lower

(6)

Annex (A)

Enquiry No. 1642 /EB
Dated Timergara the 28/08 /2015


CHARGE SHEET

I, Qasim Ali (PSP), District Police Officer, Dir Lower at Timergara as competent authority, hereby charge you Constable Muhammad Basher No.1093 committed as follows:-

That you while posted to Police Station Haya Seri absented yourself from hyour lawful duty with effect from 19/07/2015 to 21/07/2015 (02 days) and 30/07/2015 to 17/08/2015 ((18 days) total 20 days without any leave or prior permission from hyour superior, which is gross misconduct on your part.

By the reason of above, you appear to be guilty of miss-conduct and have rendered yourself liable to all or any penalties specified in Rule-4 of the disciplinary Rules, 1975.

- 2- You are: therefore, required to submit your written reply within 07 days of the receipt of this charge sheet to the enquiry officer.
- 3- Your written reply, if any, should reach to the enquiry officer, within the specified period, failing which it shall be presumed that you have no defense to put in and in that case ex-parte action shall follow against you.
- 4- Intimation as to whether you desire to be heard in person or not?
- 5- A statement of allegation is enclosed.


District Police Officer,
Dir Lower at timergara

No. 19348 /EC,

Dated 28/8 /2015

Copy to Constable Muhammad Basher No.1093 through LO Police Lines

TMG.

No. 121-21A
28-8-15

P-- (7) Annex (A)
Enquiry No. 1642 /EB
Dated Timergara the 28/08 /2015

DISCIPLINARY ACTION

I, **Qasim Ali (PSP)**, District Police Officer, Dir Lower at Timergara as competent authority as of the opinion that you **Constable Muhammad Basher No.1093** have rendered yourself liable to be proceeded against departmentally as you have committed the following acts /omission in the Rule 2 (iii) of Police Rules 1975


STATEMENT OF ALLIGATION

That he while posted to Police Station Haya Seri absented himself from his lawful duty with effect from **19/07/2015 to 21/07/2015 (02 days)** and **30/07/2015 to 17/08/2015 (18 days)** total **20 days** without any leave or prior permission from his superior, which is gross misconduct on his part.

2. For the purpose of scrutinizing the conduct of said office, with reference to the above allegation **Muhammad Naeem SDPO/Jandool**, is appointed as enquiry officer.

3. The enquiry officer shall conducted proceedings in accordance with provisions of Police Rules 1975 and shall provide reasonable opportunity of defense and hearing to the accused officer, record its findings and make within twenty five (25) days of the receipt of his order, recommendation as to punishment or other appropriate action against the accused officer.

4. The accused officer shall join the proceeding on date, time and place fixed by the Enquiry Officer.


District Police Officer,
Dir Lower at timergara

No. 18346-47/EC,

dated 28/8 /2015

1. **Muhammad Naeem SDPO/Jandool**, (Enquiry Officer) for initiating proceeding against above defaulter official within 25 days, under Police Rules 1975 in the Light of attached 10 documents.

✓ 2 Above named defaulter official.

ضاعلی

حوالہ طراز 7 جسٹریٹ/EC 19348 مورخ 08/07/2015 اتحادیہ صا - Popo
 لوہنڈیر عرض خدمت ہوں کہ قحانہ جیاد سیری جیر تقیبات تھا کہ مورخ
 29/07/2015 کو بیمار ہو کر جوٹم قحانہ میں تیمارداری کے بعد 7 بجے صبح کی سہولت
 پر اپنے سر سے ہاتھ خود کا کر مورخ 07/07/2015 کو قحانہ صیاد سیری آ کر معلوم ہوا
 کہ صیاد سیری طرف زبورٹ غیر طحری در 7 مورخ 07/07/2015 کو قحانہ صیاد سیری آ کر معلوم ہوا
 کہ قحانہ صیاد سیری جیر اپنے طحری کی زبورٹ کی ہے۔ لہذا مورخ 07/07/2015
 ہو کر قحانہ صیاد سیری سے رجسٹرڈ بیمار ان قحانہ کے حوالہ کر کے بیمار کی شدت گزار
 آ کر اسی روز بوقت 09:50 pm کٹھ چھان میں داخل ہوا۔ ڈاکٹر صاحب نے سنا لیو
 صیاد سیری کی زبورٹ کو قحانہ صیاد سیری سے بیمار کیا۔ لہذا رخصت و صیاد سیری کا قحانہ
 لگا کر آج کو حوالہ کر کے قحانہ صیاد سیری بنیادی۔ ساتھ لیو بعد ڈاکٹر
 نوالہ السلام صا۔۔۔ سے معائنہ کر کے جس نے دو اینٹیاں کچھنہ کر کے دو بیٹے
 قحانہ صیاد سیری لیو دیا۔ صیاد سیری لیو کے دوران معلوم ہوا کہ صیاد سیری طرف قحانہ
 صیاد سیری میں مورخ 07/07/2015 سے زبورٹ غیر طحری در 7 مورخ 07/07/2015
 لہذا اطلاع کے پیش نظر مورخ 08/07/2015 کو قحانہ صیاد سیری میں اپنے طحری
 کی زبورٹ کی ہے۔ تصدیقاً غیر طحری نہیں کی ہے بلکہ تصدیقاً میں
 بیمار قحانہ کے غیر طحریہ کے ساتھ ہیں۔ آئندہ قحانہ میں
 اس بار صافی دکاویر، دکاویں رکھوں گا۔ طراز سیری بلا مندر کاروالی
 ناصر فرمایا جاویں۔

11

کینٹل سٹیٹ ایجنسی 1083 قحانہ صیاد سیری طراز سیری لاہور
 2015-09-01

از دفتر ایس۔ ڈی۔ پی۔ او سرکل جندول

نمبر IDSP/ 79 مورخہ 17-09-2015

جناب عالی!

Dismissed
From
Service
11/10

بحوالہ مشمولہ انکوائری نمبری 1642/EB مورخہ 28-08-2015 برخلاف کنسٹیبل محمد بشیر 1093 معزز خدمت ہوں۔ کنسٹیبل محمد بشیر 1093 مورخہ 19-07-2015 سے 21-07-2015 تک کل دو اسی روز غیر حاضر ہو چکا تھا اور پھر دوبارہ مورخہ 30-07-2015 سے 17-08-2015 تک کل اٹھارہ (18) یوم غیر حاضر ہو چکا ہے۔ کنسٹیبل مذکورہ مقرر کر کے رپورٹ پیش کرنے کی ہدایت کی۔

حسب عائدہ انکوائری شروع کر کے قصور وار کنسٹیبل محمد بشیر 1093 کو دفتر ہذا طلب کر کے بیان قلمبند کیا گیا۔ جس میں وہ بیانی ہے کہ مورخہ 19-07-2015 کو بیمار ہو کر چونکہ تھانہ میں تیمارداری اور علاج معالجہ کی سہولت میسر نہ ہونے پر سیدھا گھر خود جا کر لہذا مورخہ 21-07-2015 کو تھانہ جیاء سیرنی میں اپنے حاضری کی رپورٹ کی ہے۔ بیماری کی شدت زیادہ ہو کر تھانہ جیاء سیرنی سے رجسٹر بیمار ان محرز تھانہ نے حوالہ کر کے ایمر جنسی ہسپتال تیرگرہ اکراہی روز بوقت 09:00 بجے تک ہسپتال میں داخل کیا۔

ڈاکٹر صاحب نے سات یوم میڈیکل لیو تحریر کر کے چونکہ میں بیمار تھا۔ لہذا رجسٹر و میڈیکل کاغذات بھائی آم کو حوالہ کر کے تھانہ جیاء سیرنی میں مورخہ 30-07-2015 سے رپورٹ غیر حاضری درج روز نامچہ کی گئی ہے۔ لہذا اطلاع کے پیش نظر مورخہ 17-08-2015 کو تھانہ جیاء سیرنی میں اپنے حاضری کی رپورٹ کی ہے۔ قصداً عہدہ غیر حاضری نہیں کی ہے۔ بلکہ حقیقت میں بیمار تھا۔ میڈیکل کاغذات ہمراہ لف ہیں۔

(2) محیب اللہ SHO تھانہ جیاء سیرنی اور سعید گل 389/MHC تھانہ جیاء سیرنی کی بیانات لیے جا کر ہمراہ لف انکوائری ہیں۔ جس میں وہ دونوں اپنے اپنے بیان میں بیانی ہے کہ کانسٹیبل مذکورہ کو عام کانسٹیبلان کی طرح معمول کی شب باشی پر چھوڑا جاتا ہے لیکن عادی غیر حاضر باش ہونے کی وجہ سے اپنے عادات سے مجبور ہے۔ اور اس طرح چھٹی گزارنے کیلئے میڈیکل لیو کا راستہ اختیار کر لیتا ہے۔ قبل ازیں مورخہ 08-02-2015 تا 12-03-2015 غیر حاضر رہا کل 32 یوم غیر حاضری کی بارے میں

راولپنڈی کے ایک ہسپتال کا ڈاکٹر کی پیش کی تھی۔ جس میں حسب ضابطہ انکوائری ہوئی ہے۔ اب مورخہ 30-07-2015 تا 17-08-2015 کو کل 18 یوم مورخہ 20-08-2015 تا 21-08-2015 ایک یوم اور مورخہ 21-08-2015 پر حاضری کر کے دوبارہ اسی روز مورخہ 21-08-2015 تا 23-08-2015 کل 2 یوم غیر حاضر ہوا ہے جس کے کل 21 یوم غیر حاضری بنتی ہیں۔ اس کے علاوہ سال رواں میں کئی دفعہ بیڈریسٹ مختلف ڈاکٹرز صاحبان سے لے چکا ہے۔ نوکری کا کافی حصہ

غیر حاضری، بیڈریسٹ اور میڈیکل لیو پر محیط ہے۔ اس کے علاوہ ڈیوٹی سرکاری میں کوئی دلچسپی نہیں لینا ہے۔ جس کے بارے میں بار بار ہدایات ہوئی ہیں۔

(رائے)

بعد ملاحظہ قلمبندی بیانات سے معلوم ہوا کہ کانشیبل مذکورہ نے اپنے بیماری کیلئے باقاعدہ رجسٹر بیمار ان میں روانگی کر کے ہمراہ ہسپتال تیرگرہ بھی لیا گیا تھا۔ جس پر ڈاکٹر صاحب نے ایک ہفتہ میڈیکل لیوٹری کر کے باقاعدہ رجسٹر بیمار ان میں انٹری ہے۔ جبکہ بعد میں مذید دو ہفتے میڈیکل لیوٹھانہ بھیجوا یا گیا تھا۔ لیکن میڈیکل کاغذات بمعہ رجسٹر تھانہ خود نہیں لایا تھا۔ بلکہ بذریعہ پرائیویٹ گاڑی بھیجوا یا گیا تھا۔ جو کہ غیر ڈسپلن ہے۔ لہذا انکو آری بمراد مناسب حکم ارسال خدمت ہے۔

ایس۔ ڈی۔ پی۔ او۔ سرکل چندول


OFFICE OF THE DISTRICT POLICE OFFICER, DIR LOWER AT TIMERGARAORDER

This order will dispose of the departmental enquiry conducted against Constable Muhammad Bashir No.1093, that he while posted to Police Station Haya Seri, absented himself from his lawful duty with effect from 19/07/2015 to 21/07/2015 (02 days), and 30/07/2015 to 17/08/2015 (18 days) Total 20 days absent, which is gross misconduct on his part. Therefore he was served charge sheet coupled with statement of allegation and Muhammad Naeem Khan SDPO Jandool was appointed as enquiry officer to conduct proper departmental enquiry and submit his finding.

The enquiry officer during the course of enquiry recorded the statement of all concerned, as well as the delinquent Officer/Officials. The Enquiry Officer in his finding report recommended him for appropriate Punishment.

Therefore, I Qasim Ali (PSP), District Police Officer, Dir Lower in exercise of power vested to me under (E & D) Rules 1975 with amendment 2014, dismissed him from Service with immediate effect and period of absence is treated as leave without.

ORDER ANNOUNCED


District Police Officer,
Dir Lower at TimergaraOB No. 376 /EC.Dated 1/10 2015.

sv
Entry made

PLZ FORC FILE

ail
dt, 2/10/15